

THE CAPPER-VOLSTEAD ACT --  
A VALUABLE TOOL FOR TODAY'S FARMERS

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Farming and the marketing of farm production have made great advancements since 1920. What would agriculture be like if farmers were to lose the benefits of the Capper-Volstead Act and be forced to use 1920 marketing practices?

What is the Capper-Volstead Act? It is a federal law that permits farmers to join together in associations, large or small, incorporated or unincorporated, to market the products they produce. Without this law, if two or more farmers joined together to market their produce they would be in violation of the antitrust laws.

What's the problem? Certain special interest groups, for various reasons, believe farmers should be denied the privilege of joining with other farmers to process, prepare for market, handle and market, the products they produce. Some of these special interest groups have suggested that if farmers are permitted to continue to join together to move their products through the marketing channels as they have been for 55 years that the number of farmers in a market association and/or the geographic area they represent and/or the volume of their combined business must be limited. But no such limit is suggested for those organizations with whom farmers will be bargaining or dealing with for market terms and price.

What's at stake? The privilege for two or more farmers to join together to process, prepare for market, handle and market, the products they produce. Today's farmers have never farmed without this privilege provided for them by the Capper-Volstead Act of 1922.

The Capper-Volstead Act has been called the "Magna Carta" of agriculture. It has also been called the "Magna Carta" of agricultural marketing cooperatives, yet the word "cooperative" does not appear in the Act. The purpose of the Act is found in its first sentence, ". . . persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut and fruit growers may act together in associations, corporate or otherwise . . ."

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A brief review of the developments that proceeded the enactment of the Capper-Volstead Act in 1922 by the U.S. Congress may help to explain why this important federal law was and is needed to permit farmers to act together in associations to market the produce of their farming operations. In 1890, farmers through their organizations such as the Grange, sponsored the Sherman Antitrust Act which Congress passed for the purposes of controlling "big businesses" and "trusts." It was a popular belief that "big businesses" were influencing or controlling the nation's economy to such an extent that farmers were not receiving a fair price for their produce and causing consumers and farmers to be charged high prices for the items they purchased. In 1890, many farmers believed that the breaking up of all big industrial companies and associations into smaller competing units would result in greater competition and lower prices for consumers; thus, the Sherman Antitrust Act was passed.

During the debate in Congress prior to the passage of the Sherman Antitrust Act of 1890, representatives of agricultural cooperatives and representation of labor unions, asked for some exemption from the Act. Neither group was able to convince the legislators that the proposed Sherman Act would prohibit two or more producers (farmers or laborers) from joining together to enhance the price of the product they had to sell to a third party. After the Sherman Act was passed, the courts held that the Act prohibited farmers from helping each other market their products and prohibited laborers from joining together to ask for a higher wage. The result was that farmers who did join together to market the products they produced were subjected to prosecution for violation of the Sherman Act.

In 1914, Congress passed the Clayton Act. Section 6 of this Act permitted the organization of labor and agricultural organizations whose purpose must be for the "mutual help" of its members. The organizations of farmers or laborers permitted by the Clayton Act must be "conducted not for profit," and the associations could not have capital stock. The Clayton Act permitted labor unions to form effective organizations. Farmers, because of the value of their agricultural products, found that the no capital stock provision limited their ability to finance the necessary marketing functions for their produce.

#### CAPPER-VOLSTEAD ACT

While presenting his legislation, Congressman Volstead explained why legislation was needed to permit farmers to "act together." "The objection made to these organizations (farmer marketing associations and marketing cooperatives) at present is that they violate the Sherman Antitrust Act and that is upon the theory that each farmer is a separate business entity. When he combines with his neighbor for the purpose of securing better treatment in the disposal of his crops, he is charged with a conspiracy or combination contrary to the Sherman Antitrust Act."

"Businessmen can combine by putting their money into corporations but it is impractical for farmers to combine their farms into similar corporate form. The object of this bill (Capper-Volstead Act) is to modify the laws

under which business organizations are now formed so that farmers may take advantage of the form of organization that is used by business concerns."

Farmer marketing associations and cooperatives are not exempt from antitrust. The Capper-Volstead Act exempts farmers from the antitrust act when they join into associations to market the products they produce. The Capper-Volstead Act does not exempt the associations formed by farmers from the antitrust act. In brief, the Capper-Volstead Act gives farmers the right to organize to market the products they produce.

#### LIMITS FOR FARMER MARKETING ASSOCIATIONS

The Capper-Volstead Act places strict limits on the activities of the marketing associations that farmers are permitted to form. It requires that such associations operate for the mutual benefit of the members as producers.

The Capper-Volstead Act requires that the association must do one or both of the following:

First. No member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, or

Second. That the association does not pay dividends on stock or membership capital in excess of eight per centum per annum.

And in any case, the association must do the following:

Third. That the association shall not deal in the products of non-members to an amount greater in value than such as are handled by it for members.

#### CONSUMER PROTECTION

Although the Capper-Volstead Act permits farmers to organize into associations to market their products, nearly two-thirds of the one and one-half page Act is for the protection of consumers. Section 2 of the Capper-Volstead Act provides that if the Secretary of Agriculture finds that an association of farmers "monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of the agricultural product marketed is 'unduly enhanced,' he is to serve a complaint against the cooperative and direct it to cease and desist."

#### A UNIQUE ACT

Section 2 of the Capper-Volstead Act is a very unique piece of legislation as it issues a warning to the farmer association to be careful how successful or efficient the association becomes that it does not unduly enhance prices. No other commodity but agriculture has this warning.

Over the past fifty years, farmers have learned to live within the strict limitations placed on their marketing efforts. Many of our current agricultural marketing programs are based consciously or unconsciously on the parameters of the Capper-Volstead Act. Many feel it would be disastrous for farmers and consumers to return to 1920 marketing programs and practices.

#### DOES NOT EXEMPT FARMER ASSOCIATIONS FROM ANTITRUST

One of the myths or fallacies repeated so often that many people have come to believe it, is that agricultural cooperative associations are exempt from antitrust laws. This is not true as the Capper-Volstead Act exempts farmers from antitrust if they join or organize a cooperative. Cooperatives, like other firms, must abide by the antitrust laws. The basic question is, "Should farmers activities be confined to production or should they have the privilege of working together to market their products produced on their farms?"